

acknowledge and appreciate that claims 31 and 32 are indicated to be allowed. See final Office Action at 4.

### **Claim Rejections Under 35 U.S.C. § 102**

Claims 1, 14-17, and 28-30 were rejected under 35 U.S.C. § 102(a) as being anticipated by WO 99/49837 to Philippe *et al* ("WO 99/49837"). Applicants respectfully traverse this rejection.

In the rejection, the Examiner states that WO 99/49837 teaches the claimed compounds used for strengthening and care of keratinous fiber and posits that the application of Applicants' claimed compounds "would inherently prevent the drying out of keratin fibres as claimed." Office Action at 2 (emphasis original). The Examiner also suggests that the term "preventing" be removed from the claims "to further the prosecution of the subject application." *Id.*

Claims 1, 14, and 16 were amended in the Amendment filed May 6, 2004. These claims now read, in relevant part, as follows:

Claim 1. A method of improving the moisturizing of and/or preventing from drying out a substance chosen from skin, and mucous membranes comprising . . . ;

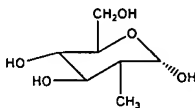
Claims 14. A method for improving the moisturizing of and/or preventing from drying out a substance chosen from skin, and mucous membranes comprising . . . ; and

Claim 16. A method for the cosmetic treatment of a substance chosen from skin, and mucous membranes comprising . . . .

In contrast, WO 99/49837 is directed to the treatment of keratin fibers such as hair, and is silent with respect to methods of improving the moisturizing of, preventing from drying out, and/or cosmetic treatment of substances such as skin and mucous membranes.

In repeating this rejection and suggesting that the term "prevention" be removed from the claims, Applicants respectfully submit that the Examiner overlooked the fact that independent claims 1, 14 and 16 were amended and no longer encompass a method of improving the moisturizing of and/or preventing from "drying out of keratin fibers," as the Examiner states on page 2 of the final Office Action. Since WO 99/49837 contains no disclosure regarding the treatment of skin and mucous membranes, Applicants respectfully submit the rejection is improper with respect to claims 1, 14 and 16, as well as claims 15 and 17 which depend therefrom.

With respect to claims 28-30, Applicants again point out that these claims are patentable in light of WO 99/49837. Claims 28-30 recite methods comprising applying homopolymers of Formula I and salts thereof in which R<sub>1</sub> of Formula I is:



WO 99/49837 does not teach or suggest homopolymers or salts thereof comprising such a carbohydrate analog. Accordingly, claims 28-30 are not anticipated by WO 99/49837.

For these reasons, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. § 102.

### **Double Patenting Claim Rejections**

Claims 1, 14-17, and 28-30 were rejected under the judicially created doctrine of double patenting over claims 23-25, 27 and 28 of U.S. Patent No. 6,585,962 to Philippe *et al.* ("the '962 patent"). Applicants respectfully traverse this rejection.

The Examiner states that the pending claims, if allowed, would improperly extend the right to exclude already granted in the '962 patent and asserts that the subject matter claimed in the instant application is obvious from the teachings in the '962 patent and claims therein. Office Action, at 3. Further, the Examiner asserts that the claims of the '962 patent are within the scope of the generic claim in the instant application. Office Action at 4. Applicants respectfully disagree for at least two reasons, set forth below.

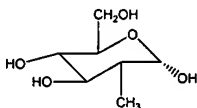
First, claims 1 and 14-17 are directed to methods of improving the moisturizing of, preventing from drying out, and/or cosmetic treatment of substances chosen from skin and/or mucous membranes, and new claims 28-30 are directed to methods of improving the moisturizing of, preventing from drying out, and/or cosmetic treatment of skin, mucous membranes, and/or keratin fibers. In contrast, claims 23-25, 27 and 28 of the '962 patent are directed to processes for preserving compositions, for example, to combat the growth of microorganisms in cosmetic and dermatological compositions. Because the claims of the '962 patent and the instant application are directed to different methods and processes, the pending claims, when allowed, will not improperly extend the right to exclude already granted in the '962 patent.

Second, the scope of the generic formulae in claim 1 of the '962 patent, upon which claims 23-25, 27 and 29 depend, either directly or indirectly, and the instant

application overlap, but neither is a subset of the other. For example, formula (I) in the '962 patent is broader than formula (I) of claim 1 of the instant application in some respects. For example,  $R_2$  in the '962 patent may be:

hydrogen;  
saturated and unsaturated, linear and branched  $C_{1-8}$  hydrocarbon-based radicals;  
and  
radicals chosen from  $--CH_2C_6H_5$ ,  $--CH_2C_6H_4OH$ ,  $--CH_2OH$ ,  $-CHOHCH_3$ ,  $--(CH_2)_t--$   
 $NH_2$ ,  
wherein  $t$  is a number chosen from 3 and 5;

However,  $R_2$  is defined as hydrogen in the instant application. Additionally, in other respects, formula (I) in the '962 patent is narrower than formula (I) of claim 1 of the instant application because it does not allow hydrogen or



as options at  $R_1$ .

Therefore, Applicants respectfully disagree with the Examiner's assertion that the pending claims could have been presented during the prosecution of the '962 patent because the genus of formula (I) of the '962 patent and the genus of formula (I) the current application are different. Moreover, nothing in the claims of the '962 patent could have suggested making the changes needed in an attempt to arrive at the homopolymers and salts thereof of formula (I) recited in the claims of the instant applications

Accordingly, Applicants respectfully request withdrawal of the double patenting rejection.

**Conclusion**

In view of the foregoing remarks, Applicants respectfully request the reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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